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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,386	07/14/2004	Kaoru Kumagai	463P119	3110
42754	7590	11/17/2005	EXAMINER	
NIELDS & LEMACK 176 EAST MAIN STREET, SUITE 7 WESTBORO, MA 01581			FULTON, CHRISTOPHER W	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/501,386

Applicant(s)

KUMAGAI ET AL.

Examiner

Christopher W. Fulton

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/16/04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
3. Claims 1, 3, 4, 6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Hinderling.

The device as claimed is substantially disclosed by the Japanese reference ('874) with a surveying reference that projects a distance measuring light 700, an operation device 2000 removably attached to the main unit, an image pickup unit 810, and a display unit 2200 in radio communication (with multiple transmitters/receivers) with the main unit for displaying the image, but lacks a rotatable reflection mirror to direct the measuring light to the object being measured and the light receiving units. Hinderling teaches using a rotating reflection mirror 18 to direct the measuring light to the object being measured and the light receiving units.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a rotating reflection mirror to direct the measuring light to the object being measured and the light receiving units in the Japanese reference ('874) as taught by Hinderling to provide optional locations for the light receivers.

4. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese reference ('874) in view of Hinderling as applied to claims 1, 3, 4, 6, and 7 above, and further in view of Japan reference ('891).

The device as claimed is disclosed by the combination of Japanese reference ('874) and Hinderling together as stated in the rejection recited above for claims 1, 3, 4, 6, and 7, but lack the surveying instrument having a leveling unit to adjust the tilt of the device. Japanese reference ('891) teaches using a leveling unit to adjust the tilt of the surveying instrument.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a leveling unit in the device of the combination of Japanese reference ('874) and Hinderling together as taught by Japanese reference ('891) to adjust the tilt of the surveying device.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese reference ('874) in view of Hinderling as applied to claims 1, 3, 4, 6, and 7 above, and further in view of Japan reference ('018).

The device as claimed is disclosed by the combination of Japanese reference ('874) and Hinderling together as stated in the rejection recited above for claims 1, 3, 4, 6, and 7, but lack the surveying instrument determining the 3-dimensional image of the object by acquiring data from more than one direction. Japanese reference ('018) teaches using the surveying instrument

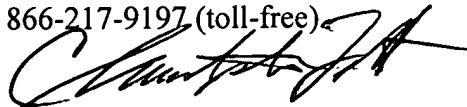
Art Unit: 2859

to determine the 3-dimensional image of the object by acquiring data from more than one direction. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the surveying instrument to determine the 3-dimensional image of the object by acquiring data from more than one direction in the device of the combination of Japanese reference ('874) and Hinderling together as taught by Japanese reference ('891) to determine the 3-dimensional image of an object.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (571) 272-2242. The examiner can normally be reached on M-Th 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher W. Fulton
Primary Examiner
Art Unit 2859

CWF